Supreme Court, U.S.
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No. 95-1666 (3)

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

BABCOCK & WILCOX COMPANY,
Petitioner,
v.
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SAN FRANCISCO,
Respondent.

MATSON NAVIGATION COMPANY, INC., WATTERS MARINE, INC., WEYERHAEUSER COMPANY (IMPROPERLY NAMED AS F.E. WEYERHAEUSER), HEUBLEIN, INC. (AS SUCCESSOR IN INTEREST TO UNITED VINTNERS, INC.), AMERICAN PRESIDENT LINES, LTD., AND MOBIL OIL CORPORATION,
Real Parties In Interest For Respondent

On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of California

PETITIONER'S REPLY BRIEF

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I. INTRODUCTION

Respondents' Brief in Opposition demonstrates unequivocally why this Honorable Court should grant a writ of certiorari in the present case. Respondents' Opposition raises issues only with respect to the summary determination by the lower courts. However, summary determination was not only proper, it was essential. Moreover, the summary determination presents this Court with the ideal situation to decide whether to abandon maritime theories of common-law indemnity that would allow a party to settle but then be dragged back into a lawsuit with the prospect of years of defense costs and paying a judgment for more than its proportionate share of the responsibility.

Babcock & Wilcox has settled more than 27,000 claims of merchant seamen asserting injuries due to asbestos exposure. Despite the settlements, Babcock & Wilcox has been brought into more than 8,000 suits on theories of contribution and indemnity. In the captioned case, Babcock & Wilcox settled with the Plaintiff and obtained a release. After the settlement and release were established, the judge of the superior court dismissed Respondents' contribution claims on Babcock & Wilcox' motion for summary adjudication but denied Babcock & Wilcox' motion with respect to the common-law indemnity claims. This ruling raised a straightforward question of law--whether, in view of the recent decisions of this Court in *McDermott, Inc. v. AmClyde*, 114 S. Ct. 1461 (1994) and *Boca Grande Club, Inc. v. Florida Power & Light Co.*, 114 S. Ct. 1472 (1994), theories of common-law indemnity exist in admiralty despite the settlement of the Plaintiff's claim.

The summary nature of the proceedings below was the perfect vehicle to present this issue. The record was developed to establish the release and settlement. The result was the summary determination of the contribution claim under *McDermott* and *Boca Grande*. If the contribution

claim was barred by the settlement and release, why was the indemnity claim likewise not barred? If common-law indemnity does not exist in admiralty after a settlement, then the indemnity claim does not exist as a matter of law and summary adjudication was also necessary. If this Court believes the time has come to create a uniform rule for maritime settlements, then the procedural posture of this case presents the vehicle to do that. If *McDermott* and *Boca Grande* establish that maritime tortfeasors are responsible for only their proportionate share, then Babcock & Wilcox' settlement has extinguished its proportionate share of responsibility. The common-law indemnity claims were extinguished as well as the contribution claims. A trial would add nothing to the legal issue whether a settlement serves as a bar to common-law indemnity claims. Consequently, Petitioner, Babcock & Wilcox, respectfully prays that this Honorable Court grant the petition for a writ of certiorari in this case to determine whether there should be a uniform rule for maritime settlements, or whether the confusion and conflict over common-law indemnity (set forth in the Petition for a Writ of Certiorari) should continue to plague the lower courts.

II. JURISDICTION OF THIS COURT

Respondents' first point, which challenges the jurisdiction of this Court to review the order of the superior court, is not responsive to the procedural posture of this case. Petitioner certainly agrees with Respondents that the Order of the superior court, summarily dismissing the contribution claim but denying summary adjudication of the common-law indemnity claims, is not the final judgment or decree of which review is being sought pursuant to 28 U.S.C. § 1257(a).

Respondents admit (Brief in Opposition, p. 6) that the final judgment within the meaning of Section 1257(a) is the Order of the California Court of Appeal which denied a writ of mandate. Respondents are correct in this assertion. The Order of the court of appeal became final when the California Supreme Court denied Petitioner's petition for review. As demonstrated in the next section of this Reply, under California law a writ of mandate was the proper procedure to order the superior court to enter judgment dismissing Respondents' maritime indemnity claims. The denial of the writ of mandate by the court of appeal is a final judgment within the meaning of Section 1257(a). *See Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 179 (1988). In that case, the Court stated: "[A] reversal of the Ohio Supreme Court's holding would preclude any further proceedings." *Id.* Similarly, as the reversal of the Order of the court of appeal below would preclude Respondents' claims, this Court has jurisdiction over the final judgment of the California Court of Appeal.

III. INDEPENDENT STATE GROUNDS FOR THE DECISION OF THE COURT OF APPEAL

In their second point, Respondents assert that there are adequate and independent grounds under California law for the denial of the writ of mandate by the court of appeal. Respondents' argument is merely a smoke screen to avoid the substantive issue of federal admiralty law which is presented directly to this Court by the procedural framework of this case.

Under California law, "A writ of mandate is a proper remedy to compel a trial court to grant a motion for summary judgment where the affidavits in support of the moving party are sufficient to sustain a judgment in his favor, and his opponent does not by counter-affidavit show

facts sufficient to present a triable issue of fact." *Roman Catholic Archbishop v. Superior Court*, 15 Cal. App. 3d 405, 410, 93 Cal. Rptr. 338, 341 (Cal. Ct. App. 1971). The California Court of Appeal explained in *Whitney's at the Beach v. Superior Court*, 3 Cal. App. 3d 258, 83 Cal. Rptr. 237 (Cal. Ct. App. 1970), that "there is . . . no open area of discretion to be exercised by the trial court" in the case of a motion for summary judgment. 3 Cal. App. 3d at 266, 83 Cal. Rptr. at 242. If there is a triable issue of fact, the motion for summary judgment must be denied; and if the court errs in granting the motion, the remedy is an appeal. *Id.* However, on the other hand, "If there is no such triable issue and the court errs in denying the motion, the ruling is an error in law and automatically is an abuse of discretion." *Id.*

In the present case, after the motion for summary adjudication established the settlement and release, there was no remaining fact question and the superior court dismissed the contribution claim. However, the superior court found that Babcock & Wilcox had failed to establish it was entitled as a matter of law to summary adjudication of the indemnity claims. (Appendix A to Petition at 4a). This setting placed the case directly within the framework to present the legal issue to the court of appeal. As there was no fact issue as to the settlement, the contribution claims were barred under *McDermott* and *Boca Grande*. If maritime indemnity claims were also barred after *McDermott* and *Boca Grande*, then the superior court's order was automatically an abuse of discretion which would require the court of appeal to issue a writ of mandate.

Unfortunately, the California appellate courts were not in a position to rule on the important issues of admiralty law presented by this case. Therefore, they had no alternative but to deny a writ of mandate and to require a

trial on the merits of all of the common-law indemnity claims. As the primary source for development of admiralty law, however, this Court is in the position to decide whether each party in an admiralty case should bear its proportionate share of the responsibility or whether doctrines such as equitable indemnity and *Ryan* indemnity should continue to provide all-or-nothing results. If this Court believes that the proportionate share rule governs, then a writ of mandate was required in this case. Therefore, the case presents the opportunity squarely under California procedure for this Court to make the determination of this important principle of federal admiralty law. There is simply no ground of California procedure, independent or otherwise, which prevents this Court from providing a uniform rule for maritime settlements.

The cases cited by Respondents further demonstrate that a writ of mandate was the proper vehicle to raise the legal issues in this case. Respondents cite *Roman Catholic Archbishop v. Superior Court* which held that a writ of mandate is the proper remedy to compel a trial court to grant a motion for summary judgment and which issued a peremptory writ to direct a judgment in favor of the petitioner. 15 Cal. App. 3d at 410, 412, 93 Cal. Rptr. at 341, 342. Respondents also cite *Omaha Indemnity Co. v. Superior Court*, 209 Cal. App. 3d 1266, 258 Cal. Rptr. 66 (Cal. Ct. App. 1989), in which the court of appeal issued a writ of mandate ordering the district court to grant a motion to sever after the California Supreme Court reversed the initial decision of the court of appeal to deny the writ. 209 Cal. App. 3d at 1269, 258 Cal. Rptr. at 67. More important, Respondents cite *Ordway v. Superior Court*, 198 Cal. App. 3d 98, 243 Cal. Rptr. 536 (Cal. Ct. App. 1988). In that case the court of appeal granted a peremptory writ to direct entry of summary judgment that a professional jockey's suit was barred by the assumption of risk defense

and to direct the superior court to enter judgment in favor of the petitioner. Interestingly, Respondents cite footnote one of that opinion for the proposition that a writ should not issue because there was no irreparable injury; however, that footnote was a reiteration of the reasons for denial of the writ in the *initial* opinion of the-court of appeal. That opinion was reversed by the California Supreme Court. After the California Supreme Court reversed the first opinion, the court of appeal *granted* the writ and ordered the superior court to grant the summary judgment and enter judgment in favor of the defendant. 198 Cal. App. 3d at 112, 243 Cal. Rptr. at 544-45.

In summary, under California law, a writ of mandate was the proper method to review a denial of summary judgment where the issue was a question of law. If *McDermott* and *Boca Grande* establish a uniform rule that both common-law indemnity and contribution claims are barred by Babcock & Wilcox' settlement, then a writ of mandate was not discretionary and the court of appeal was required under California law to order the superior court to dismiss the indemnity claim. The denial of the writ and the denial of review by the California Supreme Court constitute a final determination that common-law indemnity exists under the maritime law. Only this Court can prevent the emasculation of *McDermott* and *Boca Grande* and create a uniform proportionate share rule. Therefore, Petitioner, Babcock & Wilcox, respectfully prays that this Honorable Court grant the writ of certiorari to order the issuance of the

writ of mandate which will order the superior court to grant Petitioner's motion for summary adjudication[1] and give full effect to the settlement under *McDermott* and *Boca Grande*.

IV. PRETRIAL RECORD

Respondents' third point complains that the summary adjudication record is inadequate to review the indemnity issue. Respondents assert that the parties should bear the expense of a full trial to obtain a record for all of Respondents' indemnity theories. That argument is only valid if this Court chooses to propagate some common-law indemnity theories as exceptions to the proportionate share rule. In contrast, if this Court holds that common-law indemnity theories should be treated like contribution and be extinguished by a settlement under *McDermott* and *Boca Grande*, then the summary adjudication record perfectly presents the issue.

Babcock & Wilcox entered into a settlement with the Plaintiff and obtained a release to buy its peace. Respondents then brought Babcock & Wilcox into the present suit to seek common-law indemnity and contribution. Under the express holding of *Boca Grande*, the contribution claim was properly dismissed by the superior court. Similarly, if the settlement bars all common-law indemnity claims, the

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[1]This result is precisely what happened in two of the cases cited by Respondents. When the motion should have been granted by the superior court, the California Supreme Court reversed the court of appeal and ordered a peremptory writ of mandate to be issued. *Omaha Indem. Co. v. Superior Court*, 209 Cal. App. 3d 1266, 258 Cal. Rptr. 66 (Cal. Ct. App. 1989); *Ordway v. Superior Court*, 198 Cal. App. 3d 98, 243 Cal. Rptr. 536 (Cal. Ct. App. 1988). In those cases, however, the California Supreme Court was addressing substantive issues of state law. As the present case involves federal admiralty law, it befits this Court to address the substantive issues and reverse or affirm the court of appeal.

superior court should have dismissed the common-law indemnity claims at the same time. There is simply no need for a trial to determine liability facts if the settlement extinguishes the common-law indemnity claims as well as the contribution claims.

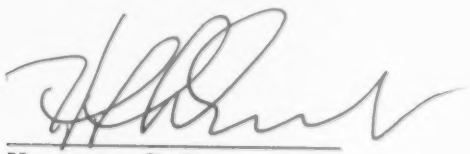
The procedural posture of this case uniquely presents the substantive issues to this Court. The Court is faced squarely with the question whether the release is a bar both to contribution and common-law indemnity claims. No further record is necessary or helpful to decide whether Babcock & Wilcox must pay its proportionate share. Under *McDermott* and *Boca Grande*, Babcock & Wilcox' settlement automatically extinguished its proportionate share. Babcock & Wilcox owes no more and should not have to undergo a full trial in this case and in 8,000 other cases where it has settled with the plaintiff.

The presentation of the issue in this case is not an abstract academic debate or advisory opinion. Either the release bought Babcock & Wilcox its peace or it did not. The superior court properly held the release was a bar to the contribution claim. Only this Court can hold that it is a bar to the indemnity claims as well. Only this Court can determine whether a settlement is the end of litigation or only the beginning.

CONCLUSION

The authorities cited by Respondents demonstrate that this case presents the ideal posture under California procedure and under admiralty substantive law for this Court to address the question whether a settling party may be liable for common-law indemnity after the decisions in *McDermott* and *Boca Grande*. Wherefore, Petitioner, Babcock & Wilcox, respectfully prays that this Honorable Court grant the petition for a writ of certiorari.

Respectfully submitted,



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